Securities Fraud and Regulatory Compliance: Why Alternative Means of Control are Necessary

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INTRODUCTION

This presentation is not about controlling high-risk securities frauds through improved identification and enhanced enforcement of existing (or new) administrative, civil, and/or criminal laws. Instead, it is about demonstrating the futility of these strategies and revealing the structural necessities for developing other strategies of social control. It proceeds by locating financial global capital within the world economy as a means of anchoring the discussions of crime and crime control within the laws of capitalist development.

To advance the argument for alternative policies, I first describe the contradictory forces of free-market capitalism as well as the failures of securities law to deter Wall Street financial frauds. Then I appraise the inefficacies and non-controls of state-legal interventions into high-stakes financial frauds. Finally, within the framework of building a globally sustainable ecosystem, I share a number of alternative policy prescriptions. Collectively, these policies revolve around the redistributions of social, political, and economic power as a plan for avoiding future securities trading catastrophes primarily caused by the intensifying financial concentrations of global capital. These policies are also in anticipation of moving away from free market economies and toward social

economies with fair markets, not unlike what has been successfully developing in the Province of Quebec, Canada.

For the past several years beginning in 2012 with the publication of my book *Theft of a Nation: Wall Street Looting and Federal Regulatory Colluding*, I have argued that for the foreseeable future *the controlling crimes of financial capitalism or crimes of capitalist control* will remain outside the formal rules of criminalization and beyond the scope of legal incrimination. With the publication of my edited volume, *The Routledge International Handbook of the Crimes of the Powerful*, in 2015, I adopted the position that so long as the prevailing social practices and policy configurations are conforming to a hegemony of neoliberal capitalist states and an intensifying global political economy of financialization that an emphasis on criminal sanctions should not be embraced as a realistic strategy for stopping high-risk financial crimes. However, so long as there is a need to contain these crimes, I have not wanted to remove securities frauds from the penal lexicon, if only for symbolic rather than deterrent value as well as for its socially constructive uses.

With the recent publication of my 2017 book *Unchecked Corporate Power: Why the Crimes of Multinational Corporations are Routinized Away and What We Can Do About It*, I was trying to empirically demonstrate and to strategically reveal how in the battle to thwart the crimes of multinationals there are a host of alternatives to criminal and civil law or to administrative and regulatory law, which potentially represent more viable economic and social strategies for curbing these crimes of unchecked corporate power.

However, before preceding further it is important that I briefly explain my position so that I will not be misunderstood or so that I am more fully understood. While I recognize that governments have traditionally been unenthusiastic about using criminal sanctions against powerful groups and have more recently not shown any interest in toppling the current management of oligopolistic banking or fragmenting corporate firms regardless of criminality and long-standing law (e.g., anti-trust or anti-monopoly) to do so. At the same time, I also recognize and disagree with the orthodox myths of too big to fail or too big to jail. In most if not all instances of financial violations, the criminal law could be enforced without dire consequences coming to financial organizations, the global economy, or to nations at large.

That is to say, "if the size of some financial institutions creates problems with applying the rule of law to the Wall Street megabanks," for example, then the power of disqualification could operate "to fragment the financial services industry through spin-offs to shareholders. As for those senior managers who tolerate without participating in criminality, the law is still well suited to subject them to severe sanctions. Accordingly, I do ascribe to and fully support the use of the corporate death penalty and the career death penalty for senior corporate offenders. To be crystal clear here: there are generally no reasonable justifications—only self-servicing excuses—for not criminally indicting the perpetrators of these offenses.

My call here is for addressing the fundamental contradictions of capital accumulation, reproduction, and sustainability. Specifically, in terms of reducing both securities frauds and the speculative risks associated with these financial crimes, the argument is that when institutionalized globally these alternative policies would enable

all nation-states a more balanced, stable, and sustainable set of growth policies than currently exists. And under the prevailing legal and social orders of global capitalism, it is realized that the preferred if not dogmatic policies of neoliberalism, privatization, and austerity, both in the past and the present, have always proven themselves to be counterproductive to their desired and stated goals and objectives.

Therefore, I am interested in structural changes that resist, on the one hand, the current pathways to unsustainable capital expansion, such as taxpayer or consumer bailouts, and that support, on the other hand, a variety of social and cultural transformation fronts. As an alternative to contemporary securities frauds and regulatory noncompliance, basic changes should include the reconstitution of rather than the breaking up of mega-banks into some kind of nationalized arrangements and/or publicly owned and shared common utilities. With respect to the accumulation and reproduction of capital, essential changes would include economic policies of redistribution to address the expanding monetary disparities. They would also include policies to undermine or push back against the undemocratic policies of political and economic power that are nourished by growing worldwide inequalities. The key to tackling unchecked corporate power and the crimes that flow from these arrangements lies within the emerging and developing policies of democratic capitalism and sustainable pragmatism.

Conversely, I am not interested in any of the existing informal means of non-criminal control or decriminalization that have been used for restraining corporate crime in general and high-risk financial harms in particular. These “alternatives” to formal criminal sanctions have included efforts to reregulate or self-regulate, such as enhanced self-monitoring, upgraded ethical conduct, or greater social responsibility. For several

decades, these banal ideas and bankrupt practices have proven themselves inadequate for addressing any forms of corporate misbehavior. There are also the poorly defined and unbinding "claw back" compensation policies for executive wrongdoing, willful misconduct, and negligence emanating from Sarbanes-Oxley and Dodd-Frank. In short, these noncriminal restrictions have been of little value beyond their ideological and obfuscating appeals that have consistently failed to acknowledge, challenge, or prevent the motive forces of unsustainable capital reproduction and exponential growth that emboldens these crimes of financialization.

THE WORLD ECONOMY IN AN AGE OF GLOBALIZATION

When contextualizing the state of global capital, most economists will agree that the complexities of forces shaping macroeconomic institutions today are a product of the fact that the rates of output growths have declined worldwide. Although this is, in part, a legacy of both the Eurozone and the supranational economic crises still prevalent in most countries. More systematically, the debtor economies of today have been on the rise for nearly two decades. In other words, to varying degrees, high levels of debt—public, corporate, and household—are continuing to weigh in on spending and growth, on failed and nonperforming loans, and on limiting the credit supply for new borrowers. Concerning the declining consumption and growth output that threatens the exponential expansion of capital accumulation and reproduction in the advanced economies, these too were occurring before the global economic crisis made them worse both by decreasing investment lending and weakening expansion productivity.

In emerging markets, these effects have been even more pronounced, especially where ageing populations, lower capital accumulation, and slower productivity growth

are combining to foreshadow a weaker overall potential for sustainable expansion in the future. In a few words, growth or the lack of growth is uneven at best and catastrophic at worst. In market capitalism, during ordinary times winners and losers are created in relation to larger monetary movements, such as when the international prime borrowing and other benchmark interest rates are established, and weather the price of oil or corn is increasing or decreasing, or what the relative price and exchange rates between the dollar, the euro, and the yen are. During extraordinary times, winners and losers have often been established in relation to debt crises and the central banks' responses to these. Such as when these key financial institutions in response to the ripple effects of the Wall Street implosion of 2008 spent more than $10 trillion dollars to stimulate economies.

This type of economic stimulation created a tidal wave of cheap money, which became the ticket for propping up and sustaining growth in many countries, while reducing unemployment and starving off, if not preventing, fiscal panics. Nevertheless, the prospects of the Greek economy defaulting created a mild panic in stock markets that reverberated around the world as nervous investors sold off stocks. For a momentary period, the value in several major stock markets dropped precipitously, including more than a 20% decline in China. Similar bear runs occurred in other stock markets as sellers turned to safer government bonds. Bonds pay less than stocks so in turn this only added to the problem of a shortage of money and lending. The point is that while Greece may still represent an extreme case of state borrowing, high borrowing by other governments and corporations alike, has had the effect of also bogging down other globally significant economies in such diverse countries as Brazil, Turkey, Italy and China.

Today, the U.S. stock markets have bounced back and are presently at all time highs. However, more than a few economists and at least one criminologist believe that these markets will soon turn southward or worse. We argue that the robust trading has been supported by a housing market recovery that has benefitted for nearly a decade from very low interest and mortgage rates. In fact, for only the past six months has the U.S. Federal Reserve started to slowly raise those rates, inching up back towards those historically reasonable levels. Meanwhile, the annual growth rates in the United States are still very weak and hover around or average a dismal 2.1%.

Turning to South America. Since 2015 Brazil with the largest economy in the hemisphere has been experiencing negative GDPs. And after a decade of depression, Argentina with the second largest economy in this part of the world, posted in 2016 a GDP of 2.57%. In other words, following a few years of what was thought to be a sluggish recovery, Argentina is now also moving in a negative direction. Both countries, in addition to their non-performing global economies, have been facing multi-faceted policy challenges. These include but are not limited to subdued household purchasing, rising utility and crime rates, cutbacks in social services and law enforcement. They also embrace arduous wage negotiations, pension contractions, and downward spiraling confidence in both governments and consumption. On top of this bad news, continuing charges of political corruption and economic mismanagement envelops both countries. Despite efforts in both countries to reduce their debts, there are really no signs of relief in sight for either Brazil or Argentina. I would also contend that making matters worse are the present belt-tightening policies of neoliberalism that curb rather than facilitate

demand. These policies time and again have proven themselves to be incapable of or inadequate for stimulating economic growth.

With respect to the future economic climate of Argentina and Brazil as well as the world at the large, the question for some time has been: how long can credit be extended to consumers, to states, and to nations alike who all share the inability to pay their debts? Exacerbating the slowdown in global economic growth and the outright stagnation in some geographical locales, there is the increasing competition of monopoly capitalism, coupled with the geopolitical and neoliberal economic policies of privatization and austerity that are expediting a "race to the bottom" between national economies. More disappointing than the lack of growth in global GDPs has been the lack of growth in global trade. In 2016, the expected global trade rates of growth fell short for the sixth year in a row. For example, the IMF had estimated world trade volumes to grow at an annual average rate of 5.1% in the years 2011-2016. However, the actual growth rate was only about 60 percent of that or 3.2% per year.

These economic relations in low GDPs and global trade have been sustained, for example, by the passage of asymmetrical international trading deals such as the North American Free Trade Agreement. Similarly, there are other nations from globally varying geographic regions, which have been developing trading blocs and associations. The Brazilian, Russian, India, China and South Africa "coalition" or the BRICS nations have recently formed the Regional Comprehensive Economic Partnership. This trading association involves ten Southeast Asian nations, including China but excludes the United States. This partnership constitutes 50 percent of the world's population.

Historically, these asymmetrical and common trading agreements have lowered tariffs, depressed wages, brought havoc to environments, and disenfranchised both citizens and sovereign nation-states. The combined effects have minimized corporate risks and have also, in effect, decriminalized numerous kinds of institutionalized harm and social injury. Former U.S. Labor Secretary Robert Reich had described TPPA or the Trans Pacific Partnership Agreement of 2015, now dead in the water, as NAFTA on steroids. As part of the newest generation of global trade agreements, the TPPA and other trade agreements such as TISA or the Trade in Services Agreement, should they be universally adopted, would gut the abilities of democratic governments to protect their citizens from the crimes and abuses of multinationals. For example, inserted into these agreements have been investor arbitration clauses that establish specialized courts and a framework of international corporate law. Together, these allow multinationals to sue governments as well as regulators for those laws that interfere with corporate bottom lines or their growth in profits.

Finally, as developed nations around the world move towards irregular economies where, for example, it is forecasted in the United State by the years 2020 and 2025 respectively, that 40 and 50 percent of the labor force will be dependent on uncertain work. That is to say, increasingly these workers will have no predictable earnings, hours, or benefits. This rapidly growing group of contingent rather than permanent workers now include "software programmers, journalists, Uber drivers, stenographers, child care workers, TaskRabbits, beauticians, plumbers, Airbnb'rs, adjunct professors, or contract nurses," and many more liable workers. Of course, irregular economies and contingent

workers will only further depress consumer demand and a slowing down of economic growth.

In sum, in the age of globalizing capital and the shifting relations in the nature of work, both earners and consumers find themselves increasingly on their own for survival, bearing most, if not all, of the risks associated with the changing global political economy.

THE CONTRADICTORY FORCES OF FREE-MARKET CAPITALISM AND SECURITIES LAW FAILURES TO CURB WALL STREET FINANICIAL FRAUDS

State-legal criminalization of security fraud hangs in the balance of the contradictory forces of free-market capitalism. For example, when similarly dominant interests and behaviors of the political economy are both illegal and highly profitable as numerous financial transactions were in the run up to the Wall Street meltdown, then the capitalist state finds itself in the position of trying both to chastise and to excuse these fraudulent behaviors. During the recent financial implosion, these contradictions were reconciled through the selective enforcement of both civil and regulatory law rather than the criminal law. For example, in a pre-adjudicated civil case JP Morgan Chase agreed to a fine of $13 billion to settle state and federal claims of securities fraud. Similarly, five other major U.S. banks agreed to pay some $25 billion to settle claims surrounding their fraudulent and illegal mortgage practices rather than face criminal or civil litigation.

The omissions of the application of the criminal law occur through the cultural and social denials of the intentionality of these financial institutions responsible for the crisis as well for the corresponding lack of moral accountability held to by the bankers in charge. In the U.S., a capitulation of both the mass media and the academic fields of law,

economics, and crime have also reinforced these cognitive denials. Whether one is examining the socio-legal political realities of the noncriminal enforcements of securities violations from the lenses of criminology, economics, or jurisprudence, their traditional orientations have been ideologically disengaged and uncritical of the role played by the capitalist state.

In the case of mainstream criminology, David Matza, underscored almost 50 years ago that among "their most notable accomplishments, the criminological positivists succeeded in what would seem the impossible. They separated the study of crime from the workings and the theory of the state." Matza was quite careful in pointing out that this "separation from reality was not necessarily a conscious or a deliberate action." Rather, he contended that "the partial blindness of these social scientists was due to the way in which they structured their studies to either obscure the obvious connections or to take those connections for granted and leave the matter at that." At the time, and in contrast to these apologists or defenders of the status quo, the iconoclast among sociological positivists and integrationist among legal scholars, Donald Black, provided a holistic method and rationale for the study of legal behavior that stands apart from most mainstream theorists in the fields of law, criminology, or sociology.

In particular, from the perspectives of both history and anthropology Black discusses and identifies four styles of legality and governmental social control: (1) penal, (2) compensatory, (3) therapeutic, and (4) conciliatory. With the exception of therapeutic control, each of these forms of legality is applicable to securities fraud. In the case of Wall Street looting and federal regulatory colluding, however, only two of these forms of legality were employed. There were multiple expressions of and overlapping exercises in

compensatory control or when victims have taken the initiative as plaintiffs in civil suits without the assistance of the state and in conciliatory control when the state has taken the initiatives to negotiate resolutions of wrongdoing without civil litigation. According to Black's theory of the law in action, these were predicable outcomes: at the very height of the pyramid of criminality or securities fraud were the Wall Street "high rollers" who were not subject to any penal control. Moving down the financial food chain, a relatively small number or handful of inside traders and hedge fund dealers were subjected to criminal indictments and convictions, but were rarely imprisoned. Further down the network of financial illegalities, a few thousand petty mortgage fraudsters were criminally prosecuted and sentenced to prison.

Structurally, the undermining policies of TBTF and the bourgeois state's failure to criminally address these financial frauds of capitalist accumulation, concentration, and centralization, arises from the processes of capitalist survival as these converge or intermingle with the internationalized patterns of what William Black has identified as *control frauds* or the ability to "cook the books" coupled with what Frank Johnston has characterized as *influential market corruption* or "legalized corruption" and Henry Pontell has explained as *resource incapacities* or the inabilities of the crime control system to compete or to go toe to toe with the "deeper pockets" of the defenders of capitalist crime control.

THE INEFFICACY OF STATE-LEGAL CONTROLS AND SECURITIES FRAUDS

Back in the not too distant past, circa 1933 to 1998, as a successful strategy for preventing the high-risk trading and speculation that contributed to the Wall Street Crash of 1929, the United States simply precluded the mixing of commercial and investment

banking transactions. Under the Glass-Steagall act of 1933, to engage in both of these banking activities under the roof of one financial institution was a criminal felony. With the passage of the Gramm-Leach-Bliley Act of 1999 this felony was finally removed from the law. Otherwise known as the Financial Services Modernization Act, the final prohibitions against the merging of commercial and investment banking were eliminated by effectively repealing Glass-Steagall. For nearly two decades, previously created banking laws and rules of regulations had been reducing the number of applicable acts that were covered under Glass-Steagall.

Bankers, policymakers, and law enforcers were making the arguments alike that these prohibitions were no longer necessary. In other words, these prohibitions impeded the flow of free markets and the making of a lot more money. It was also contended that agents of social control could allegedly avail themselves of the full range of legal strategies in order to prevent Wall Street securities frauds, to curtail financial menaces, and to otherwise assist in the stabilization and productivity of financial markets. With the Wall Street implosion of 2008 and the ensuing financial crisis of early 2009, the myth of controlling the securities markets and the mixing of commercial and investment banking was out of the proverbial bag. In the momentary realpolitik of capital hegemony, the U.S. actually considered the idea of disbanding the mega-economic institutions of global banking. In an Oval Office debate with a break for lunch in the middle that lasted six hours, Lawrence Summers, the Director of the National Economic Council for President Obama, argued for the breakup and Timothy Geithner, Obama's first U.S. Secretary of the Treasury, argued against the breakup. History tells us that the Secretary of Treasury

prevailed in that debate and the oligopolistic banks of Wall Street remained in capitalist control.

Short of legally dissolving the mega-financial institutions, we also know that neither the uncommon criminal sanctions nor the common civil regulations have ever historically leveraged enough control or a big enough wallop to make a substantial difference in the conduct of Wall Street. When it comes to enforcing the vast majority of laws governing capitalist markets and the financial services industry today, the numerous investigations each year by the Securities and Exchange Commission each have resulted overwhelmingly in steering these illegal transactions away from criminal or even civil adjudications.

Here are some interesting statistics and findings on the matter of noncriminal enforcement. With respect to the financial transgressions committed by the banking cartels of Wall Street, roughly 98% of these cases are settled without the respondents having to admit or deny illegal wrongdoing, paying some kind of token fine representing a fraction of their ill gotten gains, and promising in the future to clean up their business dealings. Not only do these settlements, representing between 650 and 700 cases per year, not deter banking fraud, they also prohibit the filing of class action lawsuits by millions of financial victims. Lastly, because these settlements do not require the submission of consent degrees that would reveal the facts upon which the agreements were reached, U.S. district judges are unable to determine whether the proposed judgments are fair, reasonable, or adequate, and, most importantly, whether or not these settlements are in the public interest.

From numerous vantage points, the state-social control panoply of legal powers have rarely, if ever, measured up to the political and economic powers wielded by those financially respectable criminals in their struggles to control their monetary transactions vis-à-vis the dominant ideology of free markets. Since the passage of the Wall Street Financial Reform and Consumer Protection Act of 2010, otherwise known as Dodd-Frank, legislators and lobbyists—even before these rules had had a chance to settle in or be implemented—were working nonstop on behalf of Wall Street to exchange, alter, overturn, and block the formation of the vast majority of those new rules designed to reregulate financial transactions involving consumers, investors, and shareholders.

The political irony is that this material and ideological resistance to the regulatory reforms of Dodd-Frank not only effectively preserves a private banking system that is dependent on the nation-state for its very viability. But at the same time, it also reinforces the same kinds of crony capitalism that contributed to the financial meltdown of 2008. These bourgeois legal relations have been characterized by an array of negotiated bailouts, exemptions, and waivers worked out between the investment oligarchy of Wall Street and the Federal Reserve System, the U.S. Department of Justice, and the U.S. Securities and Exchange Commission to avoid, at any and all costs, the criminal culpability for between $13 and $20 trillion dollars in lost wealth not to mention the liability to the tens of millions of people worldwide who lost their homes and/or jobs. The important points to grasp is that the legislation of Dodd-Frank as well as most economic analyses of the financial meltdown have tended to white-wash these accumulative social harms and other contradictions of finance capitalism. Such legislation has also failed to

question or push back against the noncriminal enforcement and the unacknowledged roles played by the capitalist state in defending the financial status quo.

The absence of law and social control as an explanation for a variety of crimes has a long tradition in criminological and socio-legal circles. For more than a century psychologists and sociologists have used the concept of social control to explain the conduct of people in organizations, neighborhoods, public spaces, face-to-face encounters, and for our purposes, in the trusting of financial relationships. When dealing with money transactions in particular, this has meant that there must "be trust in rules" and "trust that others one hardly knows will uphold the rules." Accordingly, market exchanges have disconnected their financial dealings from personal relationships by formalizing these legal dealings into agreed upon rules and regulations. Unfortunately, these legal relations of social or criminal control have rarely ever been separated from the structural needs of developing "free" market political economies. In turn, the absence of criminal or penal control of high-risk securities fraud has often followed. This material absence in control is also part of the underlying rationale for the need for an alternative paradigm to replace the criminal, civil, or self-control approaches that have failed over and over to prevent Wall Street looting and federal regulatory colluding.

As D. Black demonstrates, in the world of criminality both high and low, social control "divides people into those who are respectable and those who are not; it disgraces some, but protects the reputations of others." Within these legal dynamics of social regulation, criminality and respectability are defined at one and the same time as polar opposites. Black further reveals that social respectability also helps to explain the behavior of the law: "to be subject to law is, in general, more unrespectable than to be

subject to other kinds of social control. To be subject to criminal law is especially unrespectable." As one of Black's legal principles maintains, when all else is constant, the amount of criminal law varies inversely with the respectability of the offender's socioeconomic standing.

These characteristics of the law's behavior and of social control beg another kind of and yet related question: "How far will agents of law enforcement and academia or policy wonks go to whitewash the financial crimes of Wall Street in order to protect the fraud minimalist reputations of some of the most successful banking cartels in the world?" Simply stated, there really are no limits. In the summer of 2011, for example, there was the rather alarming and prominent whistle-blowing Congressional testimony of SEC attorney Darcy Flynn about how the state's top financial police had illegally demolished more than a decade's worth of intelligence gathered on some of Wall Street's most conspicuous offenders. These included both insider trading and securities fraud investigations involving such financial heavies as Goldman Sachs, Lehman Brothers, AIG, Deutsche Bank, and many others.

In a nutshell, shortly after the financial implosion, the SEC conveniently eliminated the records of some 9,000 investigations of wrongdoing or "Matters Under Inquiry" dating from 1993 to 2008. There were also a cozy number of cases involving high-profile firms that were never graduated into full-blown criminal investigations because of what has been referred to as an "obstruction of justice" by misbehaving attorneys caught up not only in the revolving personnel doors of government regulation and high-stakes banking, but within what has also been described as the Stockholm Syndrome of Wall Street. A condition where investors and regulators alike not only

harbor warm fuzzy feelings towards fund managers, but they also find themselves hostages of Wall Street where over and over they make fresh capital commitments to the hostage-takers newest fund.

The problem of controlling securities fraud goes far beyond the revolving doors that are not really conflicts of interests per se. As Matt Taibbi formerly of *Rolling Stone* wrote at the time of Flynn's testimony before Congress, the "SEC could have placed federal agents on every corner of lower Manhattan throughout the past decade, and it might not have put a dent in the massive wave of corruption and fraud that left the economy in flames three years ago." Actually, the FED and the SEC have always been embedded throughout Wall Street financial institutions. The same could also probably be said about the widespread use of systems of automated, real time monitoring of trades and trading patterns that have been around since the 1990s.

Perhaps, maybe the time has come to empower forensic accountants and law enforcement as well as regulatory officials to "routinely use 'panoptic' surveillance" methods and to "digitally mine the online activities of CEOs." After all, banking firms are already "tapping a cottage industry of software companies that use complex algorithms to monitor traders' calls and emails—looking for catch phrases as well as changes in tone—to try to detect signs that traders may be colluding or placing unauthorized bets."

TREATING HIGH-RISK SECURITIES FRAUD AS NONCRIMINAL MATTERS

Since the financial meltdown of 2008, people are quick to point out that the Wall Street of today is not your father's Wall Street from a generation ago, let alone your grandfather's Wall Street from the 1930s. In a world of fully digitized trading where

super-sized Wall Street firms are enabled by the latest algorithmically based software programs, these insiders can make millions in microseconds from high-volume trades. Moreover, the players of the new Wall Street are in the business of constantly developing innovative instruments and securing advantages over their investors as well as other competitive traders.

Whether or not these state-of-the art securities transactions are noncriminal or criminal, civilly legal or illegal, they have for the most part not been subject to adjudication, to interpretation, or to differing rules of law. In the case of the recent financial crash, neither the instruments old or new have been subject to criminal or civil adjudication, not to mention judicial review on the merits rather than on the settlements. Over and over, at the end of the day, the U.S. banking oligarchy with its capitalist state allies have decided what constitutes or does not constitute a “crime” in the world of securities based market transactions. In a very real sense and in the course of the DOJ’s actions or inactions, and in responses to the social harms and abuses caused by financial institutions this most powerful agency of crime control carves out on the ground the precise meanings and strategies of law enforcement. In doing so, the U.S. Department of Justice has been a key architect and constructionist of what exactly constitutes securities frauds.

To recapitulate, by midway through 2017, some nine years after the Wall Street debacle, no senior executives from any of the major financial institutions has ever been criminally charged, prosecuted or imprisoned for any type of securities fraud. This is in stark contrast to the Savings and Loans scandals of the 1980s when special governmental task forces referred some 1,100 cases to prosecutors, resulting in more than 800 bank

officials going to prison. Comparatively, some critics have argued that there has been a lack of collective governmental resolve to criminally pursue these offenses. Other critics have argued that a collective governmental resolve not to hold these offenders criminally accountable has succeeded. Both of these claims are sustained by an examination of the available evidence.

Since the collapse of Wall Street, the nonprosecution of securities fraud has been what the economic elites of Wall Street and the political elites from the Bush II and Obama Administrations, and now the Trump administration as well as the majorities of the U.S. Senate and U.S. House of Representatives has always wanted. The outcome of zero criminal prosecutions is neither by accident or conspiracy. More accurately, these noncriminal reactions are about both collusion and consent. Even before the economic crisis, a concerted effort not to prosecute “big time” financial fraud had already begun back in 2003. The course of non-prosecution could be interpreted as an overreaction to the allegedly overzealous prosecution of several corporate fraudsters by the U.S. Department of Justice at the turn of the 21^{st} century. Nevertheless, the movement not to criminalize picked up momentum in 2005-06 when the U.S. Supreme Court overturned the criminal fraud conviction of Arthur Anderson for helping to cook the accounting records of Enron.

From that point on, instead of strategies to criminally pursue these financial crimes, strategies were developed to control the damage done to the faith of the investor in the financial system. Wall Street bankers benefitted appropriately from these non-penal strategies of not criminally controlling financial fraud, which resulted in two kinds of efforts from the capitalist state. First, there were the conciliatory efforts by the

government, mainly between the Security and Exchange Commission and the Department of Justice, to restore or reinforce these institutionalized practices rather than to substantively change them. Second, there were the compensatory efforts by private investors, individual or corporate, to seek damages for their losses.

As for those conciliatory efforts, these have been fairly successful in reinforcing the "business as usual" or ways of conducting financial affairs. Today, unfortunately, these structured market relations are at the center of the financial securities crisis that is confronting both the United States and the world. As for the compensatory efforts, these have included dozens of successful cases against every major Wall Street investment firm for securities fraud, amounting to hundreds of billions of dollars in corporate fines and payments. Either way, however, these financially respectable crimes of Wall Street remain outside the purview of criminal prosecutions and any deterrent value they might have.

AN EMERGING PARADIGM AND A MANIFESTO FOR FINANCIAL CHANGE

At the end of Alan Greenspan's *The Map and the Territory: Risk, Human Nature, and the Future of Forecasting* published in 2013, the longest serving Chairman of the Federal Reserve Board (1987-2006) reveals that he no longer believes in the "free market" assumptions that he once believed in. Unfortunately, he has nothing to replace those assumptions with, including those of Keynesian economics that he once upon a time bought into. Reflecting on the banking crisis of 2008 and the Great Recession that followed, Greenspan had this to say: "I have come to a point of despair where, if we continue to make banks wards of the state through TBTF policies, I see no alternative" than to "force banks to slim down to below a certain size threshold where, if they fail,

they will no longer pose a threat to the stability of American finance." Evidently, Greenspan knows little about prosecuting securities fraudsters, for if they fail, as was pointed out in the beginning of this presentation, the use of both the corporate death penalty and the career death penalty for finance are distinct legal courses of action. As for Greenspan's pie in the sky wish that these behemoths banks slim down, well as everyone knows, the same Wall Street banks that brought about the financial implosion in 2008 are worth more dollars and are further concentrated today than before the Great Recession began.

These concentrations of wealth reinforce the manufacturing of speculation and the neoliberal polices of privatization, austerity, and securitization—all of which exacerbates economic inequality and class stagnation for the deteriorating middle and working classes. Additionally, the expanding wealth gap and the developing irregular economies also worsen the asymmetries in social and political power. As these social relations of capitalism intensify these crimes of the powerful will be less controllable in the future than they are today. Therefore, without a fundamental shift in the power relations of the global political economy and without a paradigmatic shift in economic thought and legal intervention from the present models based on a false duality of internal versus external controls of "free" markets to economic models of capitalism based on genuine understandings of the laws of capitalist development and the capitalist state, then the crimes of the most powerful financial entities will remain as marginal to incrimination as they essentially have always been.

Consequently, what are called for are alternative policies to unenlightened self-interest, unregulated financial trading, unfettered victimization, and unsustainable capital

accumulation and reproduction—in short to the failing policies of austerity and neoliberalism. The alternative policies recommended below are reflective of a slew of circulating ideas and a potentially emerging paradigm based on a restructuring of financial markets as well as the relationships between governments and the people. This alternative and sustainable paradigm encourages finance capital to move away from speculative investments that exist primarily to enrich the very few and that expand capital in the near term. This ecofriendly and people friendly paradigm moves toward small, medium, and large-scale public and private investments in commonly shared goods and services, in infrastructural development, and in greener economies for the long term.

Furthermore, this "new" paradigm is grounded in changing the existing system of ownership, in democratizing wealth, work, and leisure. This paradigm, in short, is about building community-sustaining economies from the ground up, inclusive of co-ops and both old and new forms of employee stock ownership plans in virtually every sector of the economy. As Gar Alperovitz argues: "new forms of ownership are important not only on their own, but also in that they begin to offer handholds on a new longer-term vision, a set of ideas about democratization that—if they were to become widespread, embraced, refined, and widely understood—form the basis, potentially, of bringing people together, both to challenge the dominant hegemonic ideology and to build a democratized economic basis for a new vision and new system."

Lastly, this alternative paradigm to the dystopian one of the prevailing paradigm of the possible understands that the material expansion of finance capital for the sole intention of maximizing financial capital rather than for the purposes of expanding sustainable material economies is not only counter intuitive but is also counterproductive

to the global well being for a number of reasons. Not the least of those reasons is that the maximizing of capital simply for the sake of accumulating and reproducing more, tends to harm earthly environments and to expand the deprivations of people around the globe. In a similar way, an alternative "regulatory regime" tackles or encourages a prohibition against speculating in inhospitable environments, in unsustainable debt, and in economic bubbles.

Finally, nearly all of the policy changes advocated here have been implemented in one form or the other somewhere in the world or they have some kind of contemporary political and social backing. Some of these proposed changes may only be relevant to the situation of the United States. However, the vast majority of these have worldwide applications. Most importantly, this policy agenda should not be mistaken as some kind of pie-in-the-sky laundry list of demands. Rather, these policy-oriented changes should be regarded as consistent with those coherent strategies that are striving to tackle the overarching worldwide crises in such areas as climate control, financial regulation, and health accessibility.

The more than 30 policies presented here are reflective of establishing socially sustainable economies with fair markets:

- Establish state and federal infrastructural investment banks, stocks, and bonds;
- Upgrade social programs for the nonworking poor;
- Improve family-friendly benefits including paid family leave and childcare assistance;

- Establish a livable wage and/or institute some kind of universal basic standard of living index;
- Enhance labor protection and benefit laws in general;
- Overturn, amend, or repeal Citizens v. the United States as well as those rulings of the legal fiction that a corporation is a person;
- Reform if not end private financing of public elections;
- Institute enforceable protections for whistleblowers for their service;
- Limit further or eliminate the use of the filibuster in the U.S. Senate;
- Nationalize or turn all multinational corporations worth more than $50 billion into State Owned Corporations in addition to stronger, transparent anti-trust enforcement measures, the adoption of public interest standards for enforcement actions, and the establishment of placing the burden on merging companies to prove no harm to consumers;
- Turn the so-called TBTF banks into publicly owned utilities and only break up as a last resort;
- Ban the speculative use of credit default swaps;
- Exempt securities trading, insurance operations, and real estate transactions from the Federal Deposit Insurance Corporation;
- Reign in or increase regulation of equity traders;
- Standardize derivatives and trade them openly on public exchanges;
- Institute a financial transaction tax to discourage excessive trading and risk;

- Increase the standardized rates of taxation from 30 to 50 percent for persons earning annually more than $650,000 and for families of four earning more than $1,000,00;
- Tax earned, unearned, and carried interest income at the same rates;
- Establish independent auditing and rating systems of corporate financial affairs;
- Develop high-tech tagging systems able to monitor and track algorithmic trades;
- Make companies and individuals admit wrongdoing as a condition of settling all civil charges or be forced to fight the charges in court;
- Initiate the empowerment of the Financial Stability Oversight Council under Dodd-Frank to reign in the problem of excessive risk taking by the "shadow banking" industry or by those non-banking financial institutions like AIG or Goldman Sac.
- Institute tougher restrictions and require more long-term debt, vis-à-vis the Volker Rule on speculative trading throughout the banking industry, especially involving those securities and derivatives traded as a part of "casino banking" activities to further prevent banks from engaging in proprietary trading or making risky bets with their own money;
- Amend the Volcker Rule adopted in 2013 to include industrials and technologists engaged in over the counter trades, making it equally more difficult for banks and any other corporate entities from selling and buying securities with their own cash and restricts them both from investing in risky

hedge and private-equity funds; also amend the VR further to require that executives not only guarantee their firms are in compliance, but to hold them liable for such assurances;

- Resurrect a modernized version of Glass-Steagall and/or build stronger firewalls around insured deposits involving commercial banking;
- Integrate financial market incentives with climate change adjustments;
- Support environmental defense organizations like the Business Alliance for Local Living Economies or the American Sustainable Business Council;
- Form state-owned banks and create Benefit or not-for-profit "B" corporations;
- Local and state governing accounts should divest and/or leverage their deposits from multinational banking institutions;
- Pass a comprehensive infrastructure-human development fund and Americans job and living act, appropriating $1 trillion over 10-year periods;
- Pass a forgive student loan debt and/or payback schedule based on income and/or the ability to pay;
- Establish for all working people affordable and/or subsidized housing;
- Establish a single-payer health care system in which the government rather than private insurers pay for all health care costs;
- Adopt international criminal laws that formalize a doctrine of corporate liability for corporate complicity with the commission of international crimes.